Award No. 5434
Docket No. 5299
2-C&O-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, Carrier improperly compensated Carman Reford Dingess for December 25, 1964, a regularly assigned workday of his workweek, while he was on vacation.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Reford Dingess eight (8) hours at the Carmen's applicable time and one-half rate account the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Carman Reford Dingess, hereinafter referred to as the Claimant, is regularly employed as such by The Chesapeake & Ohio Railway Co., hereinafter referred to as the Carrier, in its yards at Ashland, Kentucky. The Carrier owns and operates a large facility known as the Ashland Yards where trains are made up, switched and cars are repaired. Carmen are employed twenty-four hours per day, seven days each week and hold seniority under the provisions of Rule 31 of the Shop Crafts Agreement.

The Claimant holds regular assignment as vacation relief man, when no employes are on vacation holds regular assignment on the Carrier's Shop Track, first shift, Monday through Friday, with rest days Saturday and Sunday. The Claimant was working his shop track assignment at the time he took five (5) days' vacation beginning December 25 through 31, 1964, both dates inclusive; observing December 26 and 27 as rest days. The Carrier's Shop Track is a seven-day operation and December 25th was a regularly assigned workday of the Claimant's workweek, which the Claimant would have worked if not assigned vacation.

Attached hereto as Exhibit A is letter of Assistant Director–Labor Relations, E. H. Fitcher, addressed to the late General Chairman, E. L. Robertson. Said letter makes it a proven fact the Carrier's Ashland Shop Track is a seven-day operation.

puted that he occupied a vacation relief position. In this status he did what the vacationing relief employe would have done. When no vacation relief work existed, he was used on a supplementary or fill-in basis on the light repair track so that he would have continuous employment. As such, there was no certainty that holiday work on his position would be needed. Forces on repair tracks are typically reduced on holidays and only emergency or rush work performed because of economy reasons.

Overtime has never been assigned to a relief job of this type by bulletin or otherwise. It is not the kind of job that must always be filled because of service requirements. Proof of this is shown by the fact that no relief job at Ashland has ever been filled when the relief employe took his vacation. As explained above, the vacation of the vacation relief employes has obviously been scheduled when performing work as a supplementary employe on the light repair track, and, in effect, there would be nothing to fill.

During their progression of the claim on the property, it was pointed out by the organization that there had been instances in which the Carrier had agreed to pay the vacationing employe the amount claimed here. This is not denied. The Carrier has not applied the principle of the awards cited above as rigidly as could be done. Although no position is assigned to work on holidays, the Carrier has agreed in specific cases to considering certain positions which must be worked every day as coming under the assigned overtime principle for vacation pay purposes. It is emphasized that this has been agreed in certain situations only where the character of the service so indicated that holiday overtime was a certainty. No such certainty has prevailed with the vacation relief position held by Claimant Dingess and other similar positions.

Significant is the fact that the payment claimed here has never been allowed to occupants of any of the four vacation relief positions as Ashland. This situation prevailed a long period of time without protest, and since the instant claim was initiated, similar claim has been made for only one other occasion, that being for July 5, 1965, for the same claimant. It is a matter of speculation why the instant claim arose after such a long silence, but in any event this claim constitutes a reversal of position by the Employes.

Claimant is not due the compensation claimed here as work on his position did not meet the assigned overtime criterion of the June 10, 1942, interpretation to the Vacation Agreement. The claim should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employes or duly authorized representatives thereof and made a part of the question in dispute.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant holds a regular assignment as vacation relief man; when no employes are vacation, he holds regular assignment on the shop track. He took five (5) days; vacation beginning December 25 through December 31, 1964, inclusive. The shop track is a seven-day operation and December 25th was a regular assigned workday, which the claimant would have worked if not on vacation. This rotation of work was established by seniority.

The claimant was allowed eight hours at straight time rate and claim is made for eight hours' additional pay at time-and-one-half rate.

The vacation agreement Article 7 reads:

> "(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> (b) An employe paid a daily rate to cover all service rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.
>
> (c) An employe paid a weekly or monthly rate shall have no deduction from his compensation on account of vacation allowance made pursuant to this agreement."

The provisions of Article 7 have been limited by awards of the Board and interpretations placed on the article at the time the agreement was adopted December 1941.

Under this agreement an employe on vacation will be paid the daily compensation for such assignment but not casual or unassigned overtime. Thus was the work herein casual or unassigned overtime?

In the instant case, the claimant was a regular assigned employe and would have worked on the holiday by virtue of his position. The overtime would not be casual or unassigned, but acquired by his position and place on the seniority list.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1968.

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